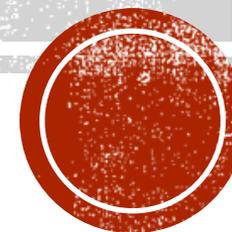


# UNDERSTANDING TIED HOUSE LAW

Best Practices In Wine & Spirits Marketing



# WHAT IS A TIED HOUSE?

- In the United Kingdom, a *tied-house* is a public house (a.k.a. pub, saloon, bar) required to purchase its beer from a particular brewery or pub company. A *free house*, in contrast, may choose to purchase any beers from any company.
- In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, bars in the U.S. were often *tied-houses* with exclusive brewery contracts. These exclusive supply arrangements led to fierce competition among retailers, they lowered prices to gain market share and led to excessive consumption. This excessive consumption, due to the tied-house arrangements, led to Prohibition in 1919.



# WHAT IS TIED HOUSE LAW

- In 1933, Prohibition was repealed, but alcohol remained heavily regulated throughout the U.S. with the passage of the Twenty-first Amendment (this amendment allows states to enact alcoholic beverage control laws or tied-house laws). These laws were implemented for two reasons: 1) to and 2) to minimize excessive sales and consumption from overly aggressive marketing programs.
- Though the laws vary from state to state the overall goal of tied house law is to limit the ability of large companies to dominate local markets through vertical and horizontal integration, and to minimize excessive sales and consumption from overly aggressive marketing programs.
- Tied House Law has evolved since 1933 but many of the regulations still exist as they were written. Many people feel that with the advent of modern technology like social media, some of the more archaic restrictions should be lifted.



# THE THREE TIERED SYSTEM

- The primary method used by states to achieve these goals of Tied House Law was the creation of the 3-Tier distribution system (Supplier -> Wholesaler -> Retailer) and specific licensing requirements for Suppliers, Wholesalers and Retailers.
- The basic structure of the system is that producers can sell their products only to wholesale distributors who then sell to retailers, and only retailers may sell to consumers. Producers include brewers, wine makers, distillers and importers.
- Some states chose to become alcoholic beverage control jurisdictions after Prohibition. In these states, part or all of the distribution tier, and sometimes also the retailing tier, are operated by the state government itself (or by contractors operating under its authority) rather than by independent private entities.



# WHO REGULATES TIED HOUSE LAW?

- Tied House Law is regulated by the Alcohol and Tobacco Tax and Trade Bureau, or TTB. The TTB was created in January of 2003, when the Bureau of Alcohol, Tobacco and Firearms, or ATF, was extensively reorganized under the provisions of the Homeland Security Act of 2002. The Act called for the tax collection functions to remain with the Department of the Treasury, and TTB was born.
- The primary responsibility of the TTB is to collect taxes on alcohol, tobacco and firearms, which is why it is a division of the Department of the Treasury. However, they (through the FAA) also enforce Tied House Laws and have the power to file criminal charges, get an injunction or consent decree, revoke and suspend permits.



# WHAT ARE THE 'TIED HOUSE' LAWS?

Tied House — “Means to Induce” 27 U.S.C. 205(b)(1) through (b)(7)

- (b)(1) Acquiring or holding...any interest in any license (State, county or municipal) with respect to premises of retailer; or
- (b)(2) Acquiring any interest in real or personal property owned, occupied, or used in the retailer’s business. • Note: 100% ownership is not prohibited. (27 CFR 6.27 and 6.33)
- (b)(3) Giving, renting, lending, or selling to retailer, equipment, fixtures, signs, supplies, money, services, or other thing of value.
- (b)(4) Paying or crediting a retailer for any advertising, display or distribution service.
- (b)(5) Guaranteeing any loan or repaying retailer’s financial obligation.
- (b)(6) Extending credit to a retailer for a “period of time in excess of 30 days from the date of delivery.”
- (b)(7) Requiring the retailer to take and dispose of a certain quota of alcohol beverages.



# HOW DO THE LAWS APPLY TO WINERIES?

- For small producers who sell most of their products DtC, the biggest impact of Tied House Law falls on marketing. The fundamental principal of Tied House Law is that there can be no inducement of a retailer by a winery to sell their product to the exclusion of other products. Therefore, a producer may not offer a retailer any “thing of value” because it could influence the retailer to give preferential treatment to the producer.
- The TTB considers marketing, including social media, websites and email promotions a “thing of value”. So if a restaurant or retailer is carrying your product you may not promote them on social media, your website, your marketing materials or in an email campaign.



# ARE THERE EXCEPTIONS TO THE RULES?

- Recent legislation in California allows advertising for instructional events or winemaker dinners at retail premises. A winery may include the following in their advertisement:
  - Name and address of the retailer (but not too prominent to the rest of the advertisement)
  - Name of the wines being poured
  - Date, time, location and other information about the event
  - The advertisement *can't* include:
    - Price of the wine
    - Complimentary statements about the retailer/restaurant



# AVOIDING TIED HOUSE PITFALLS

- Tied house laws are confusing-even infuriating to some producers but it is not worth the risk of being fined or losing your license. As long as you follow some basic guidelines you should not be at risk. If you can answer these basic questions you should be OK:
- Is a specific retailer named in your post? If so, is it in context of an educational event? If no, you have most likely violated tied-house laws.
- Does this post provide value to a specific retailer? If so, you have most likely violated tied-house laws.



# VARIATIONS IN TIED HOUSE LAW

- Tied House Law varies from the federal guidelines to how each state enforces them. California's exception to allow promotion of educational events like pourings or winemaker dinners exist in some form in most states. However, they almost always include stipulations that you cannot complement the retailer. One example from Oregon's OLCC guidelines is:



## Advertising OAR 845-013-0040

- Suppliers may advertise their products apart from a retailer's premises
- Advertising must only refer to the supplier's product
- A specific retailer may not be mentioned
- Supplier may make lists of retailers that sell its products available to customers
- Retailer lists may not include prices and must include every retailer that sells suppliers products
- suppliers may reference specific retailers subject to the following regulations:
  - OAR 845-005-0428, Retail On-Premises Distilled Spirits Sampling Involving Distillery Representative
  - OAR 845-006-0446, Promotional Events at a Retailer Licensed Premises Involving Suppliers
  - OAR 845-006-0450, Retail On-Premises Malt Beverage, Wine, or Cider Tastings Involving Suppliers
- The advertising may list no more than the retailer's name and address, the date of the event, and the name of the supplier's product.



# BEST PRACTICES IN WINE MARKETING

Tied House law is not the only regulation affecting wine marketing, the following is also prohibited

- Any statement that is false or untrue, including statements made from ambiguity, inference or omission.
- Any statement that is disparaging of a competitor's products.
- Any statement, design, device, or representation which is obscene or indecent.
- Any statement that offers a guarantee about the product.
- Any statement, design, device, or representation which relates to alcohol content or which tends to create the impression that a wine: Contains distilled spirits; or is comparable to a distilled spirit; or has intoxicating qualities.
- Any statement the product is made with or is similar to distilled spirits
- Any statement inconsistent with product labeling.



- No advertisement shall contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to, the armed forces of the United States, or of the American flag, or of any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crests, or insignia is associated.
- No statements about alcohol related to health unless it is to articulate the risks of consumption or point to a third party site where information on health risks is available. This includes any statement that drinking wine will make you feel good, or relaxed, or prettier, etc.
- Two or more different brands or lots of wine shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others
- Subliminal or similar techniques are prohibited. “Subliminal or similar techniques,” as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.



# WHAT NEXT?

Regulations in the alcohol sales industry are necessary on some level but Tied House Law & The Three Tiered System has been growth prohibitive for small producers for years. So what can you do to help?

- Contact your state and federal elected officials and let them know how this hurts your business.
- Join a state or national lobbying group.
- Start a petition.
- Raise awareness outside of the wine industry.



**QUESTIONS???**



# SOURCES

- Understanding Tied-House Laws by Hop & Vine Consultants <https://hopsandvine.net/understanding-tied-house-laws/>
- TIED-HOUSE LAWS & DIGITAL MARKETING by Balzac <https://balzac.com/tied-house-laws-digital-marketing-im-confused/>
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- Wikipedia Three-tier system (alcohol distribution)
- TTB Federal Trade Practices: What Every Industry Member Should Know <https://www.ttb.gov/images/pdfs/faa-trade-practice-master.pdf>
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